IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9373 OF 2005

Shri Ganesh Dattatray Pathare ..Petitioners
& anr
vs

Shri Sharad Vasant Ambukar & anr.. Respondents

Mr.A.G.Damle for Petitioners

Ms.Teja Katdare for Respondents

CORAM : S.A.BOBDE, J

DATED : 3rd August, 2007

P.C.

1. By this petition, the petitioner has challenged the order passed by the learned District Judge, Alibag. The learned District Judge has restrained the petitioner and granted injunction from creating any obstruction to the possession and the cultivation as well as enjoyment of the property i.e.Gat No.526 admeasuring 72 -Ares against the plaintiffs though it was initially stated that the appellate Court could not have done so. There was no map or measurement dated 18th December,2004 and the records and proceedings of the learned trial court shows that there is such a map. Apparently, it is the petitioner who failed to appear for the measurement even though a notice was given to him. Relying on such a map, the learned District Judge has prima facie found that the petitioner's contention that there was some mistake while consolidating the holdings is devoid of any substance. Moreover, it appears that the learned

District Judge has decided that the respondents are entitled to an injunction on the basis that apart from the measurement, the revenue records also show that the respondents are in possesssion of the suit field Gat No.526 which is already fenced and therefore, he is entitled to protect his possession.

2. Mr.Damle, learned counsel for the petitioner submitted that the findings are not correct because, there is no clear evidence to show that the petitioner no.1 admittedly purchased over 1 hectare of land and lost any of the land and now has only been in possession of 15 ares. It is the contention though not in so many words has been negatived by the learned District Judge while considering the area in possession of the respondents. Petition is thus liable to be rejected and is hereby rejected. All questions and the findings are left open for its determination at the time of hearing of the suit.

(S.A.Bobde, J)